

Message Text

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ACTION OES-07

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FM AMEMBASSY VIENNA
TO SECSTATE WASHDC PRIORITY 2624
INFO USERDA WASHDC PRIORITY
USERDA GERMANTOWN PRIORITY
AMEMBASSY KUALA LUMPUR PRIORITY

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USIAEA

DEPT PASS GERARD SMITH AND ALSO NRC;

ERDA PASS ROBERT FRI AND NELSON SIEVERING

E.O. 11652: N/A
TAGS: IAEA, TECH, MY MX
SUBJECT: PROPOSED TRANSFER TO MALAYSIA OF TRIGA MARK II RESEARCH
REACTOR AND FUEL

REF: A) VIENNA 6563, B) STATE 158954, C) KUALA LUMPUR 4531

1. SUMMARY: IAEA SERIOUSLY QUESTIONS U.S. DECISION
TO REQUIRE U.S.-MALAYSIA BILATERAL AGREEMENT FOR
COOPERATION FOR TRANSFER OF RESEARCH REACTOR TO
MALAYSIA. NOTWITHSTANDING REPORT REF C, MISSION
SHARES IAEA CONCERN AND, AS MATTER OF GENERAL POLICY,
URGES U.S. RECONSIDERATION OF THIS DECISION,
WHICH COULD HAVE ADVERSE CONSEQUENCES FOR U.S.
INTERESTS IN FUTURE. END SUMMARY.

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2. IAEA STAFF LEVEL REACTION REPORTED REF A TO U.S.
DECISION NOT RPT NOT TO PERMIT TRANSFER OF RESEARCH
REACTOR TO MALAYSIA THROUGH IAEA PURSUANT TO U.S.-IAEA
AGREEMENT FOR COOPERATION IS SHARED BY ACTING DIRECTOR
GENERAL HALL, ASSISTANT DIRECTOR GENERAL FISCHER AND
OTHERS IN IAEA SECRETARIAT. (DIR. GEN. EKLUND IS

IN SWEDEN). MISSION HAS RECEIVED IAEA LETTER EXPRESSING CONCERN AND QUESTIONING LEGALITY AND UTILITY OF U.S. DECISION. TEXT OF LETTER FOLLOWS SEPTEL.

3. MISSION PROPOSED SOME TIME AGO THAT CERTAIN BILATERAL GUARANTEES AND NON-PROLIFERATION CONTROLS CONTAINED IN U.S. BILATERAL AGREEMENTS FOR COOPERATION BE INCORPORATED INTO TRILATERAL SUPPLY AGREEMENTS INVOLVING IAEA, WHICH WOULD PROVIDE THE BASIS FOR ENABLING CONTINUED U.S. TRANSFERS OF REACTORS AND NUCLEAR MATERIAL THROUGH THE IAEA. THIS PROPOSAL WAS ACCEPTED BY WASHINGTON AND WE HAVE SINCE MADE SUBSTANTIAL PROGRESS IN THIS DIRECTION IN CONNECTION WITH A TRIALTERIAL PROJECT/SUPPLY AGREEMENT RELATING TO THE TRANSFER OF A RESEARCH REACTOR AND FUEL FROM THE U.S. TO MEXICO. MISSION BELIEVES THERE ARE ADVANTAGES FOR UJMS. IN PERMITTING CONTINUED TRANSFER OF REACTORS AND NUCLEAR MATERIALS THROUGH IAEA, WHICH COULD ALSO AVOID EROSION OF SUPPORT FOR IAEA WHILE SERVING U.S. NON-PROLIFERATION EFFORTS AS WELL.

4. BACKGROUND. IN 1975, GAO UNDERTOOK A STUDY OF IAEA SAFEGUARDS AND SOME OF THE UNDERLYING LEGAL INSTRUMENTS PROVIDING FOR HEAPPLICATION OF SUCH SAFEGUARDS TO NUCLEAR FACILITIES EXPORTED FROM THE U.S.A. THE REPORT RESULTING FROM THIS STUDY ISSUED BY GAO WAS CRITICAL OF ARRANGEMENTS MADE FOR THE TRANSFER OF U.S. NUCLEAR LIMITED OFFICIAL USE

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POWER REACTORS TO MEXICO AND YUGOSLAVIA THROUGH THE IAEA, NOTWITHSTANDING FACT THAT BOTH HAD ENTERED INTO SAFEGUARDS AGREEMENTS PURSUANT TO NPT, BECAUSE THERE ARE NO RPT NO PRIVISIONS IN SUCH AGREEMENTS FOR QUOTE BACK-UP UNQUOTE U.S. SAFEGUARDS AND OTHER NON-PROLIFERATION RIGHTS SHOULD THE RECIPIENT COUNTRY WITHDRAW FROM THE NPT OR IF THE IAEA FOR SOME REASON IS NOT RPT NOT ABLE TO APPLY ITS SAFEGUARDS TO THE FACILITIES INVOLVED. THIS CIRITCISM WAS SUBSEQUENTLY ECHOED BY MEMBERS OF CONGRESS. NRC SUBSEQUENTLY REFUSED TO ISSUE AN EXPORT LICENSE FOR THE WESTINGHOUSE NUCLEAR POWER REACTOR INTENDED FOR YUGOSLAVIA UNLESS THE U.S. OBTAINED CERTAIN RIGHTS REFLECTING MORE UP-TO - DATE NON-PROLIFERATION CONTROLS. THIS PROBLEM WAS EVENTUALLY OVERCOME BY HIGHEST-LEVEL U.S. INTERVENTION, BUT NOT RPT NOT WITHOUT SEVERE STRAINS IN U.S.-YUGOSLAV RELATIONS. (THE DEPTH OF FEELING ON THE PART OF THE YUGOSLAVS OVER THE ISSUE OF PRINCIPLE INVOLVED SHOULD BE INSTRUCTIVE IN DEALING WITH POSSIBLE CASES OF THIS SORTIN THE FUTURE). IN ANY EVENT, IT WAS CLEAR TO THE MISSION THAT THE GAO/CONGRESSIONAL CRITICISM WAS LEGITMATE AND CERTAINLY HAD TO BE TAKEN INTO ACCOUNT

IN FUTURE TRANSACTIONS INVOLVING TRANSFER OF U.S.
REACTOR AND FUEL.

5. MEXICAN RESEARCH REACTOR CASE. LAST YEAR IAEA WAS
ASKED BY MEXICO TO ASSIST IN ARRANGING FOR TRANSFER
THROUGH IAEA OF SMALL RESEARCH REACTOR AS GIFT FROM OREGON
STATE UNIVERSITY AND THE NECESSARY FUEL THEREFORE FOR
USE AT THE NATIONAL POLYTECHNIC INSTITUTE IN MEXICO CITY.
MISSION RECOGNIZED THE GROWING CRITICISM OVER TRANSFERS
OF THIS TYPE THROUGH IAEA, OUT TAKING INTO ACCOUNT THAT
MEXICO HAS ALWAYS RESISTED ENTERING INTO A BILATERAL
AGREEMENT FOR COOPERATION CONCERNING CIVIL USES OF
ATOMIC ENERGY WITH THE U.S., APPARENTLY DUE TO DOMESTIC
POLITICAL REASONS, AS WELL AS MEXICO'S IMPECCABLE
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NON-PROLIFERATION CREDENTIALS, WE RECOMMENDED THAT THE
REQUESTED TRANSFER THROUGH IAEA BE PERMITTED. THE DEPT,
PRESUMABLY WITH CONCURRENCE OF OTHER AGENCIES,
APPROVED THAT RECOMMENDATION.

6. BILATERAL PROVISIONS IN TRILATERAL AGREEMENTS.
DURING COURSE OF NEGOTIATING SUITABLE PROJECT/SUPPLY
AGREEMENT TO COVER TRANSFER OF RESEARCH REACTOR TO

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MEXICO, THE MISSION DEVELOPED A PROPOSAL TO INCORPORATE CERTAIN FEATURES OF U.S. BILATEAL AGREEMENTS FOR COOPERATION INTO TRILATERAL SUPPLY AGREEMENTS INVOLVING IAEA, WHICH WE BELIEVED COULD REMOVE THE BASIS FOR THE CRITICISMS MENTIONED ABOVE. WE WERE PARTICULARLY CONCERNED ABOUT PRESERVING THE POSSIBILITY OF FUTURE TRANSFERS THROUGH IAEA OF POWER REACTORS TO MEXICO, IN LIGHT OF MEXICO'S LONG-STANDING RELUCTANCE TO ENTER INTO BILATERAL AGREEMENT WITH U.S. IT SEEMED TO US THAT IT WOULD BE ILLOGICAL AND POINTLESS FOR THE U.S. TO SURRENDER TO OTHER SUPPLIERS A POTENTIAL MARKET WORTH BILLIONS OF DOLLARS IN EXPORTS TO MEXICO BECAUSE OF THE LACK OF SUITABLE LEGAL MECHANISM AVAILABLE TO MEET U.S. NON-PROLIFERATION REQUIREMENTS. WE WERE PLEASED, THEREFOEE, THAT THE DEPT APPROVED OUR PROPOSAL IN PRINCIPLE, AND WE DECIDED TO USE THE PROJECT/ SUPPLY

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AGREEMENT RELATING TO THE MEXICAN RESEARCH REACTOR AS THE VEHICLE TO INCORPORAE SUCH NEW NON-PROLIFERATION FEATURES, WHICH WE HOPED WOULD SATISFY U.S. REQUIREMENTS, AND THEREAFTER BE USED AS A PRECEDENT FOR ALL FUTURE CASES OF SIMILAR TRANSFERS THROUGH IAEA. WHILE A FEW DETAILS STILL REMAIN TO BE WORKED OUT, WE HAVE RECENTLY REACHED AD REFERENDUM AGREEMENT WITH THE IAEA SECRETARIAT ON PROVISIONS FOR THE PROJECT/SUPPLY AGREEMENT, WHICH: (A) CONTAIN GUARANTEES AGAINST ANY MILITARY USE (INCLUDING AN EXPLICIT PROHIBITION OF THE MANUFACTURER OF NUCLEAR WEAPONS OR ANY OTHER NUCLEAR EXPLOSIVE DEVICE) OF THE SUPPLIED REACTOR AND SUPPLIED MATERIAL AND ANY NUCLEAR MATERIAL CONTAINED, USED, PROCESSED OR PRODUCED IN OR BY THE USE OF THE SUPPLIED REACTOR OR THE SUPPLIED MATERIAL, INCLUDING SUBSEQUENT GENERATIONS OF SPECIAL FISSIONABLE MATERIAL, (NOTE THAT THIS WOULD STILL APPLY EVEN IF MEXICO SUBSEQUENTLY OBTAINS AND USES NON-U.S. FUEL IN THE REACTOR); (B) PRECLUDE ANY TRANSFER OF THE REACTOR OR MATERIAL FROM THE NATIONAL POLYTECHNIC INSTITUTE UNLESS AGREED TO BY IAEA AND U.S.; (C) PRECLUDES REPROCESSING, CONVERSION, FABRICATION, ALTERATION OR STORAGE OF ANY MATERIAL SUBJECT TO THE AGREEMENT EXCEPT IN FACILITIES ACCEPTABLE TO IAEA AND U.S.; (D) REQUIRE MEXICO TO TAKE ALL MEASURES NECESSARY FOR PHYSICAL PROTECTION OF REACTOR

AND ALL MATERIAL SUBJECT TO THE AGREEMENT, AND REQUIRE THAT SUCH MEASURES MUST BE ACCEPTABLE TO IAEA AND U.S.; AND (E) REQUIRE MEXICO AND THE U.S. TO AGREE FORTHWITH ON (SAFEGUARDS) MEASURES TO BE TAKEN TO VERIFY COMPLIANCE WITH THE UNDERTAKINGS OF MEXICO (PEACEFUL USES GUARANTEES, ETC) IF IAEA BOARD OF GOVERNORS DETERMINES FOR ANY REASON THAT IAEA IS UNABLE TO APPLY SAFEGUARDS AS PROVIDED FOR IN THE AGREEMENT. FURTHER-LIMITED OFFICIAL USE

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MORE, IAEA BOARD OF GOVERNORS MAY ALSO REQUIRE MEXICO TO RETURN TO THE U.S. THE REACTOR AND ALL MATERIALS SUBJECT TO THE AGREEMENT IF THE BOARD MAKES THE FOREGOING DETERMINATION. THUS, IT IS EVIDENT THAT FEATURES ALREADY DEVELOPED WOULD MEET MOST, IF NOT RPT NOT ALL, OF U.S. STRENGTHENED NON-PROLIFERATION REQUIREMENTS, WHILE AT SAME TIME PRESERVING IAEA'S TRADITIONAL ROLE OF SERVING AS INTERMEDIARY FOR MEMBER STATES, WHICH, FOR ONE REASON OR ANOTHER, PREFER NOT RPT NOT TO ENTER INTO A BILATERAL RELATIONSHIP WITH U.S., TO OBTAIN U.S.-SUPPLIED NUCLEAR FACILITIES AND MATERIALS THROUGH IAEA. IN OUR VIEW, A TRILATERAL AGREEMENT INVOLVING IAEA WITH THE FOREGOING PROVISIONS IS AS LEGALLY BINDING AND EFFECTIVE AS A BILATERAL AGREEMENT FOR COOPERATION CONTAINING ESSENTIALLY THE SME PROVISIONS.

7. CONSEQUENCES OF U.S. DECISION. WE BELIEVE THAT U.S. REFUSAL TO PERMIT TRANSFER OF NUCLEAR REACTORS (EITHER RESEARCH OR POWER) THROUGH IAEA WILL TEND TO UNDERMINE RAHTER THAN STRENGTHEN IAEA, AND IS CONTRARY TO U.S. NON-PROLIFERATION INTERESTS. AS IN THE CASE OF MEXICO, THERE MAY BE OTHER MEMBER STATES WHICH, FOR VARIOUS REASONS, PREFER NOT RPT NOT TO HAVE A BILATERAL AGREEMENT WITH THE U.S. THE U.S. ITSELF MAY ALSO ON OCCASION BE RELUCTANT TO ENTER INTO SUCH RELATIONSHIP

WITH CERTAIN COUNTRIES. NEVERTHELESS, IN BOTH TYPES OF CASES THERE MAY EXIST STRONG INCENTIVES TO DEAL WITH ONE ANOTHER. WE BELIEVE PAST EVENTS HAVE SHOWN THE VALUE OF HAVING AVAILABLE ON AVENUE, SUCH AS PROVIDED BY THE US/IAEA AGREEMENT, WHICH IS ACCEPTABLE TO BOTH SUPPLIER AND RECIPIENT. IF A MEMBER STATE PREFERS TO DEAL THROUGH IAEA, BUT IS DISCOURAGED FROM DOING SO, THIS WOULD LEAD TO A DECLINE OF INTEREST IN AND SUPPORT OF OTHER IAEA ACTIVITIES, SUCH AS ITS SAFEGUARDING

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FUNCTIONS. THE CUMULATIVE EFFECT OF THIS OVER TIME IS LIKELY TO RESULT IN A GENERAL LACK OF INTEREST AND WEAKENING OF SUPPORT FOR IAEA. MOREOVER, IF THAT STATE IS UNABLE TO SATISFY ITS NEEDS FROM THE U.S. THROUGH IAEA AND PREFERS NOT RPT NOT TO DEAL DIRECTLY WITH U.S. IT WILL SIMPLY TURN TO ANOTHER SUPPLIER THAT WILL SATISFY ITS NEEDS. IT IS DIFFICULT TO SEE HOW THIS WOULD BENEFIT THE U.S. OR ADVANCE U.S. OBJECTIVES. WE ALSO BELIEVE U.S. REFUSAL TO PERMIT TRANSFERS OF REACTORS THROUGH IAEA WILL TEND TO ERODE U.S. CREDIBILITY AS A SUPPLIER, AS WELL AS BE INTERPRETED AS A CLEAR INDICATION OF LACK OF CONFIDENCE BY THE U.S. IN IAEA.

8. USG LEGAL OBLIGATIONS. WE NOTE THAT ACTING DIR GEN HALL'S LETTER OF JULY 18, TEXT TRANSMITTED SEPTEL, RAISES QUESTION OF CONSISTENCY OF USG POSITION, RE REQUEST BY MALAYSIA, WITH UNDERTAKING BY USG SET FORTH IN ARTICLE IV OF US/IAEA AGREEMENT FOR COOPERATION.

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THIS QUESTION HAS NOT RPT NOT BEEN DISCUSSED WITH THE MISSION AND WE ARE UNABLE TO ASSESS ITS VALIDITY. ITS

SIGNIFICANCE IN OUR VIEW, IS THAT MEMBERS OF THE BOARD OF GOVERNORS (E.G., YUGOSLAVIA, PHILIPPINES, MAY ALSO

RAISE SUCH QUESTIONS IN BOARD MEETING, POSSIBLY RELATING USG POLICY TO NPT ARTICLE IV AS WELL. IN THAT CONTEXT, LEGALISTIC RESPONSE TO QUESTION OF INTERPRETATION OF U.S.-IAEA AGREEMENT, PARTICULARLY ONE WHICH SECRETARIAT WILL NOT RPT NOT ENDORSE COMPLETELY, WOULD SERIOUSLY DAMAGE U.S. POSTURE IN IAEA AND IN NON-PROLIFERATION EFFORTS OUTSIDE IAEA.

9. CONCLUSION AND RECOMMENDATIONS. MISSION BELIEVES FOREGOING FACTORS ARGUE STRONGLY IN FAVOR OF A REVIEW OF THE POLICY IMPLICATIONS OF THE U.S. DECISION WITH LIMITED OFFICIAL USE

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RESPECT TO THE MALAYSIAN RR WHICH HOPEFULLY WOULD LEAD TO REVERSAL OF THAT DECISION, EVEN IF MALAYSIA SHOULD EVENTUALLY AGREE TO ENTER INTO A BILATERAL AGREEMENT WITH THE U.S. AS WE HAVE ATTEMPTED TO ELABORATE, WE ARE CONCERNED MORE ABOUT THE PRINCIPLE INVOLVED AND ITS LONG TERM IMPLICATIONS FOR THE IAEA THAN ABOUT THE MALAYSIAN CASE PER SE. ACCORDINGLY, MISSION RECOMMENDS THAT THIS MATTER BE CAREFULLY CONSIDERED BY USG AGENCIES CONCERNED.

10. FINALLY, WE SHOULD ALSO POINT OUT A POTENTIALLY IMPORTANT SIDE BENEFIT RESULTING FROM TRANSFERS OF REACTORS THROUGH IAEA (WHICH IN ACCORDANCE WITH IAEA STATUTE, REQUIRE THE DESIGNATION OF THE REACTOR AS AN QUOTE AGENCY PROJECT UNQUOTE), WHICH RELATES TO SAFETY CONSIDERATIONS. UNDER AN AGREEMENT ESTABLISHING SUCH AGENCY PROJCT, THE RECIPIENT STATE ASSUMES COMPREHENSIVE OBLIGATIONS TO BUILD AND OPERATE THE REACTOR IN CONFORMITY WITH IAEA'S SAFETY REGULATIONS WITH RIGHTS AND RESPONSIBILITY IN IAEA TO INSPECT THE REACTOR TO ASSURE THAT SUCH REGULATIONS ARE OBSERVED. IAEA HAS RIGHT UNDER SUCH AGREEMENTS, FOR EXAMPLE, TO PROHIBIT TRANSFER OF FUEL FOR REACTOR UNTIL AND UNLESS IAEA IS SATISFIED RE SAFETY OF REACTOR. IAEA DOES NOT RPT NOT HAVE THIS QUOTE CLOUT UNQUOTE WITH RESPECT TO REACTORS NOT RPT NOT TRANSFERRED THROUGH IAEA, ALTHOUGH THE IAEA MAY BE REQUESTED BY THE STATE CONCERNED TO PROVIDE NUCLEAR SAFETY ADVICE, WHICH IT FREQUENTLY DOES. THERE IS NO RPT NO OBLIGATIONS FOR SUCH A STATE, HOWEVER, TO FOLLOW IAEA'S ADVICE NOR ANY REQUIREMENT FOR ANY FOLLOWUP IAEA INVOLVEMENT, NOR ANY ACTION PERMITTED BY IAEA TO INTERFERE WITH FUELING OR OPERATION OF REACTOR . THE OPINION OF HAVING LIMITED OFFICIAL USE

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RECTORS IN DEVELOPING COUNTRIES ESTABLISHED AS QUOTE AGENCY
PROJECTS UNQUOTE MAY BECOME AN
INCREASINGLY IMPORTANT FACTOR FOR THE U.S. IN
CONNECTION WITH FUTURE EXPORTS OF REACTORS. (NRC IS
AWARE OF SOME OF THE REACTOR SAFETY RELATED PROBLEMS
CONCERNING U.S. SUPPLIED NUCLEAR POWER PLANTS IN
CERTAIN COUNTRIES WITH WEAK OR NON-EXISTENT NUCLEAR
REGULATORY FRAMEWORKS.)

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